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9
10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 DONALD WALDEN JR, NATHAN
13 ECHEVERRIA, AARON DICUS, BRENT
EVERIST, TRAVIS ZUFELT, TIMOTHY
RIDENOUR, and DANIEL TRACY on behalf of
themselves and all others similarly situated,

14 Plaintiffs,

15 vs.

16 THE STATE OF NEVADA, *EX REL.* ITS
17 NEVADA DEPARTMENT OF CORRECTIONS,
and DOES 1-50,

18 Defendants.
19

Case No.: 3:14-cv-00320-MMD-WGC

**DEFENDANTS THE STATE OF
NEVADA, *EX REL.* ITS NEVADA
DEPARTMENT OF CORRECTIONS'
SEVENTH MOTION TO FILE UNDER
SEAL**

20 Defendant the State of Nevada, *ex rel.* its Nevada Department of Corrections (“NDOC”), by
21 and through its attorneys, Wilson Elser Moskowitz Edelman & Dicker LLP, hereby moves to seal
22 certain confidential exhibits attached to NDOC’s Motion to Decertify Collective Action, Motion for
23 Summary Judgment on the Merits of Plaintiffs’ FLSA Claims, Motion for Summary Judgment on
24 Statute of Limitations, Motion to Exclude All Evidence From Plaintiffs’ Experts, The Employment
25 Research Corporation, Malcolm Cohen, and Laura Steiner (collectively “Motions”), concurrently
26 filed herewith. This is the seventh such filing, in keeping with NDOC’s prior Motion to Decertify
27 Collective Action, filed on January 31, 2018 (ECF Nos. 134 and 135), Opposition to Motion for
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1 Partial Summary Judgment on the FLSA Claims With Respect to the Two Issues of Liability
 2 Presented, filed February 28, 2018 (ECF Nos. 142 and 143), Opposition to Motion for Class
 3 Certification, filed on March 12, 2018 (ECF Nos. 159 and 160), Reply in Support of Motion to
 4 Decertify Collective Action (ECF Nos. 171 and 172), NDOC's Motion to Exclude all Evidence from
 5 Plaintiffs' Experts, The Employment Research Corporation, Malcolm Cohen and Laura Steiner
 6 (ECF No. 189) and Opposition to Motion for Partial Summary Judgment on Liability for Unpaid
 7 Wages Under the FLSA, filed on April 7, 2020.

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 9 This Motion is made and based upon the following Memorandum of Points and Authorities,
 10 all pleadings and papers on file herein, and any oral argument that may be presented at any hearing
 11 on the Motion. A proposed Order is attached hereto as Exhibit "A."

12 DATED: April 8, 2020.

13 **WILSON ELSEER MOSKOWITZ**
 14 **EDELMAN & DICKER LLP**

15 BY: /s/ Cara T. Laursen

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22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. INTRODUCTION**

24 NDOC once again respectfully requests an Order sealing certain exhibits attached its Motions
 25 concurrently filed herewith to protect the confidentiality of information and material subject to the
 26 Stipulated Protective Order filed on September 23, 2015. NDOC also seeks to protect Plaintiffs'
 27 personal and confidential information. NDOC's Motions necessarily cites to and references this
 28 confidential material. Furthermore, Plaintiffs have confirmed the anticipated use of additional

confidential documents also subject to the Stipulated Protective Order. Accordingly, NDOC seeks an order sealing those exhibits and additional documents.

II. ARGUMENT

This Court has the discretion to seal records pursuant to Federal Rule of Civil Procedure 5.2(d), which states that this Court “may order that a filing be made under seal without redaction.” Under Local Rule 10-5(b), “papers filed with the Court under seal shall be accompanied by a motion for leave to file those documents under seal [...]” Pursuant to the Nevada Rules for Sealing and Redacting Court Records (“SRCR”), any person may request that the court seal or redact court records by filing a written motion to initiate proceedings to seal or redact a court record. *See* SRCR Rule 3(1). The public interest in privacy that outweighs the public interest in open court records includes findings that: “the sealing furthers [...] a protective order entered under NRCP 26(c).” *Id.* at 3(4)(c).

The parties entered into a Stipulated Protective Order on September 23, 2015, to protect certain confidential information and records from becoming public knowledge. This confidential information is deemed confidential in order to protect the internal policies and procedures of the NDOC facilities. In the interest of public safety, it is necessary that this information be kept confidential. The following exhibits are deemed to be confidential and subject to the Stipulated Protective Order and therefore, are entitled to be filed under seal.

I. Motion to Decertify Collective Action

Exhibit	Description of Document
A.	Nevada Department of Corrections Administrative Regulation 326 Posting of Shifts/Overtime, effective date 09/16/14
A-1.	Nevada Department of Corrections Administrative Regulation 339 Employee Code of Ethics and Conduct, Corrective or Disciplinary Action, and Prohibitions and Penalties
A-2.	Nevada Department of Corrections Administrative Regulation 320 Salary Administration, effective date 09/16/14
B.	Excerpts from the State of Nevada Employee Handbook

1	C.	Variable Work Schedule Request
2	D.	Election of Compensatory Time
3	E.	Aaron Dicus' Personnel File
4	F.	Nathan Echeverria Employee Personnel File
5	G.	Brent Everist Personnel File
6	H.	Timothy Ridenour Personnel File
7	I.	Daniel Tracy Personnel File
8	J.	Donald Walden, Jr. Personnel File
9	K.	Travis Zufelt Personnel File
10	L.	State of Nevada Human Resources Data Warehouse, Employee Paycheck Analysis
11	O.	Table 1 – Variations in Plaintiff Work Schedules and Compensatory Time
12	O-1.	Table 1A – Variations in Plaintiff Work Schedules and Compensatory Time (with Bates numbers)
13	P.	Robert Crandall Declaration
14	Q.	Table 2 – Documents Plaintiff received, acknowledged reviewing, and/or agreed to abide by AR 320
15	R.	Deposition of Travis Zufelt (excerpts)
16	S.	Deposition of Donald Walden, Jr. (excerpts)
17	T.	Deposition of Donald Riggs (excerpts)
18	U.	Deposition of Andre Natali (excerpts)
19	V.	Deposition of Eric Jones (excerpts)
20	W.	Deposition of Daniel Tracy (excerpts)
21	X.	Deposition of Aaron Dicus (excerpts)
22	Y.	Deposition of Timothy Carlman (excerpts)

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II. Motion for Summary Judgment on the Merits of Plaintiffs' FLSA Claims

Exhibit	Description of Document
F	Declaration of Robert Crandall
K	A.R. 320
L	Variable Work Schedule Request
M	Election of Compensatory Time
N	Variations in Plaintiffs Work Schedules and Compensatory Time
O	Deposition Transcript of Timothy Carlman (excerpts)
P	Deposition Transcript of Donald Riggs (excerpts)
Q	A.R. 326
R	Correctional Officer Position Essential Functions
S	Documents Acknowledging Overtime Requirements, A.R. 320
T	State of Nevada Employee Handbook Excerpts
U	Employee Paycheck Analysis for Aaron Dicus
V	Employee Paycheck Analysis for Nathan Echeverria
W	Brent Everist Employee Personnel File
X	Timothy Ridenour Employee Personnel File
Y	Daniel Tracy Employee Personnel File
Z	Donald Walden, Jr. Employee Personnel File
AA	Travis Zufelt Employee Personnel File
BB	State of Nevada Human Resources Data Warehouse Employee Paycheck Analysis for Various
CC	Authorization for Leave and Overtime Request Form for Brent Everist
DD	Authorization for Leave and Overtime Request Form for Timothy Ridenour
EE	Authorization for Leave and Overtime Request Form for Daniel Tracy
FF	Deposition Transcript of Natali
GG.	A.R. 322

Exhibit	Description of Document
HH.	Deposition Transcript of Francisco Bautista (excerpts)
II.	Deposition Transcript of Paul Kluever (excerpts)
JJ.	Deposition of Hanski (excerpts)
KK.	Deposition Transcript of Banks (excerpts)
LL.	Nathan Echverria Employee Personnel File
MM.	Deposition Transcript of Eric Jones (excerpts)
NN.	Deposition Transcript of Lai (excerpts)
OO.	Deposition Transcript of Ledingham
PP.	Deposition Transcript of Timothy Ridenour (excerpts)
QQ.	Deposition Transcript of Rocho (excerpts)
RR.	Deposition Transcript of Tremblay
SS.	Deposition Transcript of Tynning
TT.	Deposition Transcript of Radke
UU.	Deposition Transcript of Shultz
VV.	Deposition Transcript of Daniel Tracy (excerpts)
WW.	Deposition Transcript of Arnold (excerpts)
XX.	Deposition Transcript of Allen (excerpts)
YY.	Deposition Transcript of Arias (excerpts)
ZZ.	Deposition Transcript of Baros (excerpts)
AAA.	Deposition Transcript of Day (excerpts)
BBB.	Deposition Transcript of Aaron Dicus (excerpts)
CCC.	Deposition Transcript of Nathan Echverria (excerpts)

Exhibit	Description of Document
DDD.	Deposition Transcript of Krol (excerpts)
EEE.	Deposition Transcript of Donald Walden, Jr. (excerpts)
FFF.	Deposition Transcript of Travis Zufelt (excerpts)
GGG.	Deposition Transcript of Valdez (excerpts)

III. Motion for Summary Judgment on Statute of Limitations

Exhibit	Description of Document
B.	Table of Plaintiffs' Dates of Employment

IV. Motion to Exclude All Evidence From Plaintiffs' Experts, The Employment Research Corporation, Malcolm Cohen, and Laura Steiner

Exhibit	Description of Document
E.	Laura Steiner Survey Instrument
F.	Thierman Buck Survey Cover Letter
G.	First Employment Research Corporation Report
H.	Second Employment Research Corporation Report
I.	Table 4a, Appendix F: Work Activities Before and After Scheduled Shift (Only Final Wave Included)
J.	Laura Steiner Deposition Transcript Excerpts
K.	Robert Crandall Rebuttal Declaration
L.	Aaron Dicus Deposition Transcript Excerpts

III. CONCLUSION

For the foregoing reasons, NDOC respectfully requests that this Court enter an Order sealing the aforementioned list of exhibits attached to NDOC's Motions, concurrently filed herewith and

1 additional documents to be utilized by Plaintiffs in their anticipated motion practice. A proposed
2 order is attached hereto as Exhibit "A."

3 DATED: April 8, 2020.

4 **WILSON ELSE MOSKOWITZ**
5 **EDELMAN & DICKER LLP**

6 BY: /s/ Cara T. Laursen

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP and that on the 8th day of April, 2020, I electronically filed and served a true and correct copy of the foregoing **DEFENDANTS THE STATE OF NEVADA, *EX REL.* ITS NEVADA DEPARTMENT OF CORRECTIONS' SEVENTH MOTION TO FILE UNDER SEAL** to all parties on file with the CM/ECF:

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☒ Defendants Sealed Exhibits listed in this Motion will be sent to Plaintiffs' electronically with a Dropbox link that is password protected.

By: /s/ Lani Maile
An Employee of WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP